

266 NLRB No. 189

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D--9931
Chicago, IL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SONICRAFT, INC.

and

Case 13--CA--22448

WAREHOUSE, MAIL ORDER, OFFICE,
TECHNICAL AND PROFESSIONAL
EMPLOYEES UNION, LOCAL 743,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA

DECISION AND ORDER

Upon a charge filed on 6 August 1982 by Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Sonicraft, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint on 26 August 1982 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6)

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and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. On 9 September 1982 the Acting Regional Director for Region 13 issued an amendment to the complaint.

With respect to the unfair labor practices, the complaint, as amended, alleges in substance that on 16 July 1982, following a Board election in Case 13--RC--15881, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about 28 July 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive

¹ Official notice is taken of the record in the representation proceeding, Case 13--RC--15881, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

In joining his colleagues in granting summary judgment, Chairman Dotson notes that he did not participate in the Board's Decision certifying the Union and that his participation in the instant proceeding does not necessarily indicate that he accepts the underlying certification order.

bargaining representative, although the Union has requested and is requesting it to do so. Subsequently, Respondent filed its answer to the complaint, as amended, admitting in part, and denying in part, the allegations in the complaint.

On 25 October 1982 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 29 October 1982 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Respondent's answer admits the Union's request to bargain but denies or alleges that it is without knowledge or information sufficient to form a belief that (a) the charge was filed by the Union on 6 August 1982 and was served on Respondent, by certified mail, on 9 August 1982;² (b) the Union is now, and has been at

² We are satisfied, on the basis of a review of the record, including the charge herein and affidavit of service thereof, that the charge was filed on 6 August 1982 and was served on Respondent, by certified mail, on 9 August 1982.

all times material herein, a labor organization within the meaning of Section 2(5) of the Act;³ (c) at all times since 16 July 1982, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the employees in the appropriate bargaining unit and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of employees in the appropriate collective-bargaining unit; and (d) since on or about 28 July 1982 Respondent, both verbally and in writing, has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate collective-bargaining unit. Respondent's answer and its response to the Notice To Show Cause also, in substance, attach the validity of the Union's certification on the basis of objections to the election in the underlying representation proceeding.⁴

³ We note that Respondent has, throughout the course of the representation proceeding in Case 13--RC--15881, admitted that the Union was a statutory labor organization and that our Decision and Certification in that proceeding implicitly makes that finding.

⁴ The record reveals that by letter dated 22 July 1982 the Union requested Respondent to recognize it and bargain with it as the collective-bargaining representative of Respondent's employees. Verbally on 28 July 1982, and by letter dated 11 August 1982, Respondent acknowledged receipt of the Union's bargaining demand and stated that it "has no legal duty to bargain with the Union because the underlying certification in Case No. 13--RC--15881 was improperly granted by the NLRB."

Presumably in reference to the exclusion of confidential investigatory affidavits from the record on review, Respondent maintains that the Union's certification was improper because the Board did not have before it "the complete record in this matter for review" when it issued its (continued)

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.⁵

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

⁴ Decision and Certification of Representative on 16 July 1982. The Board has held in Summa Corporation d/b/a Frontier Hotel, 265 NLRB No. 46 (1982), that statements of witnesses are properly excluded from the record. Here, as in Summa Corporation, we find that the record before the Board in Case 13--RC--15881 contained all the documents necessary and relevant for our review in the representation proceeding.

⁵ See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is, and has been at all times material herein, an Illinois corporation, maintaining facilities in Chicago, Illinois, where it is engaged in the manufacture of electronic and electromechanical systems. During the year ending 31 December 1981, which period is representative of its operations at all times material herein, Respondent, in the course and conduct of its business operations, shipped goods valued in excess of \$50,000 from its Chicago facilities directly to points outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, maintenance and warehouse employees employed by Respondent at its Chicago facilities, but excluding office clericals, engineers, draftsmen, technicians, guards and supervisors as defined in the Act.

2. The certification

On 11 December 1981 a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 13, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on 16 July 1982 and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about 22 July 1982 and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about 28 July 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive

representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since 28 July 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the

initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Sonicraft, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.
3. All full-time and regular part-time production, maintenance and warehouse employees employed by Respondent at its Chicago facilities, but excluding office clericals, engineers, draftsmen, technicians, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. Since 16 July 1982 the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose

of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about 28 July 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Soncraft, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, International Brotherhood of

Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time production, maintenance and warehouse employees employed by Respondent at its Chicago facilities, but excluding office clericals, engineers, draftsmen, technicians, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Chicago, Illinois, facility copies of the attached notice marked "'Appendix.'"⁶ Copies of said notice, on forms provided by the Regional Director for Region 13, after

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

8 July 1983

Donald L. Dotson, Chairman

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time
production, maintenance and warehouse
employees employed by the Employer at its
Chicago facilities, but excluding office
clericals, engineers, draftsmen, technicians,
guards and supervisors as defined in the Act.

SONICRAFT, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by
anyone.

This notice must remain posted for 60 consecutive days from
the date of posting and must not be altered, defaced, or covered
by any other material. Any questions concerning this notice or
compliance with its provisions may be directed to the Board's
Office, Everett McKinley Dirksen Building, 219 South Dearborn
Street, Room 881, Chicago, Illinois 60604, Telephone 312--353--
7597.